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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,262	09/10/2003	John W. Baumgartner	95373	5057
28020	7590	07/01/2004		
GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A. P.O. BOX 2906 MINNEAPOLIS, MN 55402-0906				
			EXAMINER MAYO, TARA L	
			ART UNIT 3671	PAPER NUMBER

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,262

Applicant(s)

BAUMGARTNER ET AL.

Examiner

Tara L. Mayo

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3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-27, 29-32 and 34-38 is/are rejected.
- 7) ☒ Claim(s) 28 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04 06 04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The preliminary amendment filed 06 April 2004 has been entered and an Office action considering the same follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 29, 30, 32, and 34 through 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Vogel et al. (U.S. Patent No. 6,136,194 A).

Vogel et al. '194, as seen in Figure 2, disclose a multiple layered organic waster storage lagoon basin cover (36A) comprising:
with regard to claim 29,

a first layer (top element 52) located on top and comprised as a sacrificial layer for shielding form ultraviolet light degradation (col. 4, lines 3 through 5);

a second layer (51) beneath the first layer and attached to it;

a third layer (bottom element 52) beneath the second layer and attached to it;

one of said second and third layers being a flotation foam layer; and

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the other of said second and third layers being a geotextile material (col. 5, lines 3 through 7);

with regard to claim 30,

wherein said first, second, and third layers are divided into cover panels (37) ;

with regard to claim 32,

wherein the foam layer is the second layer; and

with regard to claim 34,

wherein the first layer is formed of a geotextile material.

Vogel et al. '194, as seen in Figure 2, additionally disclose:

with regard to claim 35,

an organic slurry basin (12) containing a quantity of organic slurry (col. 3, lines 15 through 24); and

with regard to claim 36,

a plurality of tether lines (58) connected to the edges of the cover for connecting the cover to anchors (60) located on a perimeter surrounding the basin.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 24, 26 through 28, 31, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. (U.S. Patent No. 6,136,194 A).

Vogel et al. '194, as seen in Figure 2, disclose an organic waste storage lagoon basin cover (36A) comprising:

with regard to claim 24,

a plurality of connected panels (37) of interconnected multiple layers;

each panel having a top sacrificial layer (top element 52) to shield the cover from ultraviolet light degradation;

each panel having a foam layer (51); and

each panel having a layer of geotextile fabric (bottom element 52);

with regard to claim 26,

wherein the foam layer is located between the sacrificial layer and the geotextile layer;
and

with regard to claim 27,

wherein the sacrificial layer is also formed of a geotextile fabric (col. 5, lines 3 through 7).

Vogel et al. '194 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claims 24, 31, and 37,

the foam layer comprising a plurality of parallel, spaced apart foam strips.

With regard to claims 24, 31, and 37, it has been held that separate elements fastened together in place of one-piece construction is a design consideration within the ordinary level of skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. (U.S. Patent No. 6,136,194 A) in view of Paulson et al. (U.S. Patent No. 6,171,984 B1).

Vogel et al. '194 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 25,

the various layer being interconnected by needle punching.

Paulson et al. '984 disclose a method of assembling a geotextile fabric comprising multiple layers and expressly teach needle punching as a suitable means for performing the steps of the same (col. 27, lines 37 through 57).

With regard to claim 25, it would have been obvious to one having ordinary skill in the art of geosynthetics at the time of invention to interconnect the layers of the device shown by Vogel et al. '194 by needle punching as taught by Paulson et al. '984. The motivation would have been to connect the layers in a manner not requiring costly fasteners or adhesives; i.e., cost efficiency.

8. Claim 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. (U.S. Patent No. 6,136,194 A) in view of MIRAFI®-Case Study: *Embankment/Sludge Lagoon* and MIRAFI®-Product Description: *Mirafi® Filterweave® Woven Geotextiles*.

Vogel et al. '194 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claim 38,

an earthen berm surrounding the basin;

a trench formed in the berm; and

edges of said cover located in the trench and held therein by fill material in the trench.

MIRAFI®-Case Study: *Embankment/Sludge Lagoon* discloses a single piece cover comprising Mirafi® Filterweave® 402 deployed over a sludge lagoon, the cover comprising a plurality of geotextile sections sewn together.

MIRAFI®-Product Description shows the margin of a sheet of geotextile being buried within a berm adjacent a body of water with a vertical sidewall above the water line.

With regard to claim 38, it would have been obvious to one having ordinary skill in the art of containment at the time of invention to modify the device shown by Vogel et al. '194 such that edges of the cover would be buried in a trench formed in an earthen berm surrounding the basin. The motivation would have been to secure a larger perimeter of the cover over the lagoon and to more evenly distribute tensile stresses across the same.

Allowable Subject Matter

9. Claim 28 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Copies of the references MIRAFI®-Case Study: *Embankment/Sludge Lagoon* and MIRAFI®-Product Description: *Mirafi® Filterweave® Woven Geotextiles* have not been included with the attached PTO-892 because they were cited during prosecution of parent application serial no. 09/774,842.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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TLM

26 June 2004



THOMAS B. WILL
SUPERVISORY PATENT EXAMINER
GROUP 3600